STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 18, 2002
v	No. 233199 Wayne Circuit Court
WETONKA BLACKMON, Defendant-Appellant.	LC No. 00-008424

Before: Murphy, P.J., and Markey and R.S. Gribbs*, JJ.

PER CURIAM.

Defendant appeals by right his bench trial convictions for assault with a dangerous weapon, MCL 750.82, and wilful and malicious destruction of personal property ($1,000 to $20,000), MCL 750.377a(1)(b)(i). Defendant was sentenced to two years' probation, with the first ninety days in jail. We affirm.

Defendant and his former girlfriend of seven years, Charmain Lockridge, met at the Super Kmart in Dearborn to discuss defendant's possible visitation with their daughter. While inside the store, defendant became upset. He knocked over clothing racks and pushed over shopping carts in the parking lot. Lockridge left the store and was on her way home when she saw defendant's car exiting the freeway behind her. Lockridge testified that as she crossed Plymouth Road, she saw defendant come from behind her on the passenger side. He struck her car on the front bumper of the passenger side, which caused her car to go over the curb and into a fence. Lockridge believed defendant struck her car with his front, driver's side bumper.

Monique Lee, a passenger in defendant's car, testified that defendant exited at the Plymouth exit, but she felt defendant's car being struck from behind on the passenger side. Lee did not see the car that struck defendant's car, but defendant told her Lockridge had hit his car. Darlene McDougle, defendant's mother and owner of the car defendant was driving, testified that her car was damaged only on the rear bumper, which had been torn away.

Defendant's sole claim on appeal is that the prosecution failed to present sufficient evidence to convict him of felonious assault and malicious destruction of property. We disagree. In reviewing the sufficiency of the evidence presented in a bench trial, an appellate court views the evidence de novo and in the light most favorable to the prosecution to determine whether the

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

trial court could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39 (2002). See also *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). Credibility is a matter for the trier of fact to ascertain. We will not resolve it anew. *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990). A trier of fact may make reasonable inferences from evidence in the record, but may not make inferences completely unsupported by any direct or circumstantial evidence. *Id.* at 379-380.

The elements of felonious assault are: (1) an assault, (2) with a dangerous weapon, (3) and with intent to injure or place a victim in reasonable fear or apprehension of an immediate battery. *People v Lawton*, 196 Mich App 341, 349; 492 NW2d 810 (1992). Felonious assault is a specific intent crime. *People v Robinson*, 145 Mich App 562, 564; 378 NW2d 551 (1985). Specific intent may be proven indirectly by inference from the conduct of the accused and surrounding circumstances from which it logically and reasonably follows. *Lawton*, *supra* at 349. An automobile may be a dangerous weapon where it is used in furtherance of accomplishing an assault and is capable of inflicting serious injury. *People v Sheets*, 138 Mich App 794, 799; 360 NW2d 301 (1984).

MCL 750.377a, entitled "willful and malicious destruction of property; personalty," provides, in part: (1) "A person who willfully and maliciously destroys or injures the personal property of another is guilty of a crime as follows." The statute then designates four categories depending on the amount of destruction or injury. The relevant subsection here is MCL 750.377a(1)(b)(i), which provides for felony punishment if "(i) the amount of the destruction or injury is $1,000 or more but less than $20,000." Prior case law has, however, established that the offense of malicious destruction of property also requires proof that the defendant intended to injure or destroy the property in question. *People v Nelson*, 234 Mich App 454, 459; 594 NW2d 114 (1999), quoting *People v Culp*, 108 Mich App 452, 458; 310 NW2d 421 (1981).

Defendant first argues the evidence was insufficient to support his convictions because it did not establish that defendant had struck Lockridge's car. We disagree. Lockridge testified that after the argument at Super Kmart, she saw defendant come from behind her, along her passenger side, and strike her car with what she believed was his front bumper. Police Office Tony Cotton testified that it appeared Lockridge's car had been side swiped. Also, McDougle testified that the car defendant was driving had the left side of the rear bumper torn away. Though there was no damage to defendant's front bumper, the trial court resolved the conflicting testimony in favor of Lockridge, rather than finding that she had struck defendant's car. The trial court "may choose to believe or disbelieve any witness or any evidence presented in reaching a verdict." *People v Cummings*, 139 Mich App 286, 294; 362 NW2d 252 (1984). Because the trial court is in the best position to judge credibility, this Court will not substitute its judgment for that of the trial court, but will defer to the trial court's resolution of factual issues that involve the credibility of witnesses. *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997); *People v Martin*, 199 Mich App 124, 125; 501 NW2d 198 (1993). Because this case turned in large part upon Lockridge's credibility, and the trial court resolved the conflicting evidence in her favor, there was sufficient evidence to establish beyond a reasonable doubt that defendant had struck Lockridge's car.

In addition to the above facts that provide sufficient evidence that defendant intended to strike the car Lockridge was driving, Lonnie Lockridge, the owner of the car and Charmain's

father, testified that the costs of repairs exceeded $1,000 but were less than $20,000. The prosecution provided sufficient evidence to convict defendant of malicious destruction of personal property.

Defendant also raises a voluntary intoxication defense arguing the prosecution failed to present sufficient evidence to prove the specific intent elements of these crimes. Defendant claims that the evidence demonstrated that he was incapable of forming the requisite specific intent due to voluntary intoxication. We disagree.

Voluntary intoxication is a valid defense to felonious assault and malicious destruction of personal property.[1] See *Culp*, *supra* at 458 (voluntary intoxication defense permitted for offense of malicious destruction of property); *People v Lakeman*, 135 Mich App 235, 240; 353 NW2d 493 (1984) (voluntary intoxication defense permitted for offense of felonious assault). The intoxication defense will negate the specific intent element of the crime charged if the degree of intoxication is so great as to render the accused incapable of entertaining the intent. *People v King*, 210 Mich App 425, 428; 534 NW2d 534 (1995), quoting *People v Savoie*, 419 Mich 118, 134; 349 NW2d 139 (1984).

In determining whether an assault was committed with the intent charged, specifically in light of an intoxication defense, the jury may consider "the nature and circumstances of the assault, the actions, conduct and demeanor of the defendant, and his declaration before, at the time, and after the assault." *Savoie*, *supra* at 133, quoting *Roberts v People*, 19 Mich 401, 418 (1870). Although there was evidence that defendant had been drinking on the night in question, his behavior supported a finding that he was capable of forming the requisite specific intent to commit the offenses. There was testimony that defendant had arranged and attended a meeting with Lockridge to discuss the visitation of their daughter. Defendant had picked up Lee before going to the store. After leaving the store, he conversed with Lee and expressed fear of no longer being able to see his daughter. Meanwhile, defendant acted out of concern for Lee's safety, promising to take her to a friend's house, rather than having her driving with him in an intoxicated state. Defendant drove rapidly behind Lockridge, veering to the side of her car and forcing her off the road. Afterwards, defendant found his way to the Sixth Precinct, gave his personal effects to Lee, told her to call his mother, and went inside. Considering defendant's planning and execution of his plans, his expressive conversations with Lockridge and Lee, his finding, and then turning himself in, at the police station, there was sufficient evidence to enable a trier of fact to infer that defendant intended to assault Lockridge with his car and extensively damage her personal property.

We affirm.

/s/ William B. Murphy
/s/ Jane E. Markey
/s/ Roman S. Gribbs

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[1] We note that in the recent case of *People v Carpenter*, 464 Mich 223, 239 n 10; 627 NW2d 276 (2001), our Supreme Court declined to address previous decisions that recognized voluntary intoxication as negating specific intent. The Court stated that the continued validity of the intoxication defense was not before it. *Id*.